CF0000110055

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR : M. P.

Misc. Petition No. 3143 of 1990

Petitioner: Raipur Development Authority
Raipur, through its Chief Executive Officer,
Raipur, M.P.

Vs.

Respondents:
(1) Smt. Sonsir, wife of late Shri Jalam, resident of Gudhiyari, c/o AITUC Office, Sharad Chowk, Raipur, M.P.

(2) Shri Paras Ram, aged 32 years, resident of Gudhiyari, C/o AITUC Office, Sharad Chowk, Raipur, M.P.

(3) Deputy Labour Commissioner, Raipur, District Raipur, M.P.

(4) Assistant Labour Commissioner, Raipur, District Raipur, M.P.

PETITION UNDER ARTICLES 226 & 227 CONSTITUTION OF INDIA FOR WRITS IN THE NATURE OF CERTIORARI, MANDAMUS ETC. AND FOR APPROPRIATE FURTHER DIRECTIONS.

The petitioner above named begs to submit as under:

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(43)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.3143 OF 1990

Petitioner	:	Raipur Development Authority, Raipur
	versus	
Respondents	:	Smt. Sonsir and others

Present : Ms. Madhu Modi, counsel for the petitioner.
Ms. Deepali Pandey, Panel Lawyer for respondents No.3 and 4.
None appears for respondents No.1 and 2.

ORDER
(Passed on 5th of December, 2006)

The petitioner is a body notified under Section 38 of the Madhya Pradesh/Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (henceforth 'the Adhiniyam, 1973'). The petitioner – Authority is engaged in the activity of development of Raipur City by construction, development or maintenance of buildings, roads, bridges, etc. to provide basic amenities to the citizens residing within its limits.

2. The deceased Jalam, husband of respondent No.1 and father of respondent No.2, was in the service of the petitioner – Authority working as Chowkidar. On his resignation with effect from 26-7-1988, the deceased Jalam made an application for grant of gratuity

for the period he worked as Chowkidar between 1977 to 26-7-1988 (Annexure P-1).

3. Being aggrieved, a dispute was raised before the Assistant Labour Commissioner, Raipur. The Assistant Labour Commissioner – Controlling Authority, under the Payment of Gratuity Act, 1972 (henceforth 'the Act, 1972'), by order dated 27-3-1989 (Annexure P-4), directed the petitioner – Authority to make payment of gratuity to the tune of Rs.3,168/- within a period of one month, failing which, a simple interest at the rate of 10% was payable on the gratuity.

4. Being aggrieved, the petitioner – Authority filed an appeal before the appellate authority – Deputy Labour Commissioner under the Act, 1972. The appellate authority – Deputy Labour Commissioner under the Act, 1972, by order dated 26-10-1990 (Annexure P-7), dismissed the appeal, holding as under : -

> "A. ..... Before taking this point it would be necessary to look to the nature of duties, functions which the R.D.A. performs. In particular the Establishment of the R.D.A. is engaged in relation to work of construction, development, or maintenance of buildings, roads and bridge and to provide basic amenities to the citizens residing within its limits thus the activities of the R.D.A. undoubtedly falls within the ambit of the term "Industrial Establishment" as defined under Section 2(ii)(g) of the Payment of Wages Act. The term used under Section 1(3)(b) "any Law for the time being enforce" cannot have a restricted scope of application, the law may be a Central Law or the

(15)

> State Law is immaterial. This view has been upheld by their lordships of the Supreme Court in the case of State of Punjab vs. The Labour Court Jullundhar and other Respondents A.I.R. 1979 SC – Page 1981. Accordingly having reliance on the above pronouncement I am of the view that the Provisions of the Payment of Gratuity Act are applicable to the establishment of the appellants."

5. The petitioner – Authority has filed this petition under Articles 226 and 227 of the Constitution of India challenging the validity of the order dated 27-3-1989 (Annexure P-4) passed by the Assistant Labour Commissioner under the Act, 1972 and the order dated 26-10-1990 (Annexure P-7) passed by the appellate authority – Deputy Labour Commissioner under the Act, 1972.

6. Ms. Madhu Modi, learned counsel appearing for the petitioner – Authority, submits that the petitioner – Authority is not a shop or establishment within the meaning of the Shops and Establishments Act as defined in Section 1(3)(b) of the Act, 1972.

7. Ms. Deepali Pandey, learned Panel Lawyer appearing for respondents No.3 and 4, *per contra*, supported the orders passed by the authorities below.

8. After hearing learned counsel appearing for the parties, perusing the documents on record and going through the provisions, it is evident that the petitioner – Authority has more than ten employees in its activities of construction and development of buildings, roads,

bridges, etc. to provide basic amenities to the residents of Raipur City. The petitioner – Authority is not performing any sovereign function. The provisions of Section 1(3)(b) of the Act, 1972 are comprehensive and the petitioner – Authority is covered under it. By virtue of the provisions of the Adhiniyam, 1973, the petitioner – Authority is an establishment and it is not necessary to search provisions of any other enactment to define establishment for the purpose of the provisions of the Act, 1972.

9. There is no error apparent on the face of the record and no infirmity or irregularity has been committed by the authorities below in passing the impugned orders. Thus, there is no warrant to interfere with the impugned orders dated 27-3-1989 (Annexure P-4) and dated 26-10-1990 (Annexure P-7) passed by the authorities below.

10. The writ petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gopal